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10/584,259	06/26/2006	Motokazu Nakayama	1021.46326X00	5654

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EXAMINER

LATHAM, SAEEDA MONEE

ART UNIT

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1782

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/584,259

Applicant(s)

NAKAYAMA ET AL.

Examiner

Saeeda Latham

Art Unit

1782

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/4/2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The amendment to the claims filed on 1/4/2010 has been entered. Claims 3-13 are currently pending in this application. The previous objections to the abstract and specification are withdrawn in view of applicant's amendments.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claim 3, 7-10, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe JP 5003772.**

4. Claims 3, 7-10 relate to a method of improving the emulsion stability of baitang soup. Watanabe teaches a manufacturing method for the emulsification of soup (0001). Extraction manufacturing of gelatin is carried out by using bone, skin of an animal such as soup for boiled pork ribs ramen noodles [0004, 0010]. Watanabe further teaches the gelatin is processed with acid (1st gelatin) or alkali (2nd gelatin), therefore the isoelectric points are 6.5-9.0 and 4.5-5.5, respectively. The weight ratio of 1st gelatin to 2nd gelatin is 95:5 to 10:90 (0010). The mixture of the gelatins with oil and fat yield a good emulsified product [considered baitang soup]. The pH of the product material is 5.3 to 7.0 (0012). If necessary a pH adjuster can be added like sodium hydroxide, acetic acid,

etc (0013). The objective is to make an emulsion that when diluted, the oil is distributed uniformly (0005) and reduces the formation of a separate phase of oil in soup, when water is added (0003). It would have been obvious to one having ordinary skill in the art, at the time of the invention to have made soup, by selecting the weight ratio of 1st gelatin to 2nd gelatin as 70:30 to 10:90, which results in the 2nd gelatin present as 30 wt% to 90 wt% from the overlapping range, wherein the 2nd gelatin has pl 4.5-5.5 and adjusted the pH of the soup to yield a pH 6.0 to 7.0 from the overlapping range. Additionally one skilled in the art would have selected 30 wt% or more, 40 wt% or more of the 2nd gelatin based on the weight ratio and the isoelectric point which is made 1.5 to 2.5 lower than the pH of the soup based on the pl and pH taught by Watanabe.

5. Claim 13 relates to the pH. Watanabe teaches the pH of the product material is 5.3 to 7.0 (0012).

6. Watanabe does not explicitly teach pH 6.0 to 9.0. It would have been obvious to one having ordinary skill in the art, at the time of the invention, to have selected 6.0 to 7.0 because of the overlapping range.

7. **Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe JP 5003772 in view of Fujimoto et al., USPGpub 2007/0110865.**

8. Claim 6 relates to the raw material under the condition of releasing vapor generated by the heating into the atmosphere. Watanabe teaches a manufacturing method for the emulsification of soup (0001). Extraction manufacturing of gelatin is carried out by using bone, skin of an animal such as soup for boiled pork ribs ramen noodles [0004, 0010].

9. Watanabe does not teach heat-treating the raw material. Fujimoto teaches the raw material is under heating and pressurizing condition such as a pressure cooker for extraction of proteins, peptides, and other taste elements [0020]. It would have been obvious to one having ordinary skill in the art at the time of the invention to have utilized a pressure cooker as Fujimoto to effectively extract proteins, peptides, and other taste elements to produce the soup of Watanabe. The pressure cooker is considered under conditions of releasing vapor generated.

10. Claims 4, 5, 11, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe JP 5003772 in view of Fujimoto et al., USPGpub 2007/0110865.

11. Claim 4 relates to the method for producing baitang soup. Watanabe teaches extraction manufacturing of gelatin is carried out by using bone, skin of an animal such as soup for boiled pork ribs ramen noodles (0004, 0010). Watanabe teaches various oil and fat are used as the oily ingredient (0011). The gelatin solution and oily ingredient is mixed to yield an emulsification that is uniform (0011). Watanabe further teaches the gelatin added has a weight ratio of 1st gelatin to 2nd gelatin is 95:5 to 10:90 (0010). The mixture of the gelatins with oil and fat yield a good emulsified product [considered baitang soup]. The pH of the product material is 5.3 to 7.0 (0012). If necessary a pH adjuster can be added like sodium hydroxide, acetic acid, etc (0013). It would have been obvious to one having ordinary skill in the art, at the time of the invention to have made soup, by selecting the weight ratio of 1st gelatin to 2nd gelatin as 70:30 to 10:90, which results in the 2nd gelatin present as 30 wt% to 90 wt% from the overlapping range,

wherein the 2nd gelatin has pl 4.5-5.5 and adjusted the pH of the soup to yield a pH 6.0 to 7.0 from the overlapping range.

12. Watanabe does not teach separating the oily phase. Fujimoto teaches the extraction process of pork bone extract (title), wherein the liquid extract is obtained by solid-liquid separation (0021) and then the oil and fat generated during the extraction is separated using an apparatus that separates into three-layers (0022). It would have been obvious to one having ordinary skill in the art at the time of the invention to have extracted pork bone and removed the oil phase taught by Fujimoto's to produce Watanabe gelatin that would yield a soup that is a stable emulsion.

13. Claim 5 relates to concentrating the aqueous phase, Watanabe teaches the extraction manufacturing of gelatin is carried out by using bone, skin of an animal (0010). The gelatin may be powdered material and added to the oily ingredient (0011). In one embodiment the 1st and 2nd gelatin is dried (0026). It would have been obvious to one skilled in the art to extract gelatin, as an aqueous phase and therefore the powder (or dried) material would be the concentrated stock of gelatin.

14. Fujimoto further teaches the liquid extract can be concentrated by various means heat or vacuum concentration (0023). It would have been obvious to one having ordinary skill in the art at the time of the invention to have concentrated the liquid extract as taught by Fujimoto to produce Watanabe's solid gelatin that would be easily manufactured for dilution in an aqueous medium by a consumer.

15. Claim 11 relates to the solid content. Fujimoto teaches the soluble solid content (brix) is preferably 50 or less [0029]. It would have been obvious to one having ordinary

skill in the art, at the time of the invention, to have selected 10 to 50% because of the overlapping range.

16. Claim 12 relates to the oil and fat that are added. Fujimoto teaches the oil and fat are added so that the concentration of the pork bone extract is preferably 10 to 40% (v/v) [0025].

Response to Arguments

17. Applicant's arguments with respect to claim 3 and 4 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

19. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saeeda Latham whose telephone number is 571-270-1154. The examiner can normally be reached on Monday to Thursday 8:00AM - 5:00PM EST.

21. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

22. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. L./
Examiner, Art Unit 1782

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1782